IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARIA T. BUSS, individually and as administratrix of CYRIL F. BUSS, SR., deceased, and DANA BUSS,	:	**CIVIL ACTION**
Plaintiffs,	:	
v.	:	
CORPORAL JOHN QUIGG,	:	
Defendant	:	**No. 01-CV-3908**

MEMORANDUM AND ORDER

SCHILLER, J. **October , 2002**

The question before me is whether plaintiffs who have prevailed on a constitutional claim under §1983 but have obtained only nominal damages may recover attorney's fees.

Plaintiffs Maria T. Buss, suing on her own behalf and on behalf of the estate of her late husband, Cyril Buss, Sr.,[1] and their daughter, Dana Buss, commenced this 42 U.S.C. §1983 action on August 2, 2001 against Defendant Pennsylvania State Police Corporal John Quigg. Plaintiffs alleged that Cpl. Quigg unlawfully entered their home and used excessive force against them in violation of rights secured by the Fourth and Fourteenth Amendments. On August 14, 2002, following a jury trial, this Court entered judgment for Plaintiffs with respect to the unlawful entry claim. The Court entered judgment for Defendant with respect to Plaintiffs' claim that they suffered an actual emotional injury as a result of Defendant's unlawful entry, and for Defendant with respect to the excessive force claim. The Court awarded Plaintiffs nominal damages of one dollar each.

[1] On April 29, 2002, Maria Buss was substituted as administratrix of the estate of Cyril Buss, Sr., who died on November 9, 2001, over two years after this litigation began.

Presently before this Court is Plaintiffs' motion for attorney's fees and costs. Plaintiffs assert that they are the prevailing party and seek $35,560 in attorneys fees and $7,979 in costs pursuant to 42 U.S.C. §1988. Defendant responds that Plaintiffs are not entitled to fees and costs because they do not qualify for prevailing party status and have not succeeded sufficiently on their claims. Because I find that Plaintiffs are the prevailing party and have obtained a partial victory, but also concur with some of Defendant's specific objections to claimed fees and expenses, I grant Plaintiffs' motion in part and award attorney's fees in the amount of $34,660 and costs in the amount of $3,479.

I. BACKGROUND

On the afternoon of August 3, 1999, and again on the morning of August 4, Cpl. Quigg, accompanied by other officers, went to the Buss home in Upper Black Eddy, Pennsylvania to serve an arrest warrant upon James Donnelly, then the boyfriend of Dana Buss. This case arises out of the events that occurred on those two occasions. Plaintiffs' amended complaint alleged that on August 3, Cpl. Quigg entered the Buss home without consent, and, without knocking or announcing his presence, proceeded to the second floor of the home and shouted orders at Dana Buss while pointing a gun at her. (Pls.' Am. Compl. ¶ 8,9.) The amended complaint further alleged that on August 4, Cpl. Quigg returned to the Buss home, again entered without permission or notice of his presence, and again proceeded to the second floor where he was confronted by Cyril Buss, Sr., who demanded to see some authorization, such as a warrant, for Cpl. Quigg's entry. (Pls.' Am. Compl. ¶ 11.) The parties agreed that Quigg failed to produce a warrant and that

Cpl. Quigg subsequently took Donnelly into custody without incident. (Stip. Facts [2] ¶ 2.)

As Cpl. Quigg and other officers escorted Donnelly to a police car parked on the street, Cyril Buss, Sr., followed the officers and continued to demand to see a warrant. (Pls.' Am. Compl. ¶ 13.) When, in the midst of his demands, Buss threatened to smash the windshield of the police car, Cpl. Quigg told Buss he was under arrest for disorderly conduct. (Stip. Facts ¶ 13.) Buss immediately ran toward his home, with Cpl. Quigg and another officer in pursuit and Cpl. Quigg attempting to spray Buss with pepper spray. (Stip. Facts ¶ 18.) Buss re-entered his home and locked the door. (Id.) Cpl. Quigg and the other officer re-entered the home, where a physical altercation occurred. (Stip. Facts ¶ 19.) Plaintiffs alleged that during the altercation, Dana Buss was thrown backwards, causing injury, and Maria Buss was kicked in the mid-section by Cpl. Quigg, causing injury. (Pls.' Am. Compl. ¶ 17,19.) Plaintiffs further alleged that once Cpl. Quigg and the other officers had subdued and detained Cyril Buss, Sr., they visited serious physical abuse upon him in the street near the police car, causing injury. (Pls.' Am. Compl. ¶ 20.)

On the basis of these facts and allegations, Plaintiffs' amended complaint alleged, *inter alia*, §1983 violations pursuant to the United States and Pennsylvania constitutions and federal and state laws against Cpl. Quigg and alleged supervisory liability for Cpl. Quigg's actions against three unnamed officers. Specifically, Count I alleged that Cpl. Quigg's actions in violation of §1983 including invasion of privacy, assault and battery, use of excessive force, illegal detention, false arrest, arrest without probable cause, arrest and detention without due process and false imprisonment. Count II alleged supervisory liability against three unnamed supervising officers

[2] "Stip. Facts" refers to Plaintiffs' and Defendant's Joint Pre-Trial Stipulations, Agreed Facts.

based on failure to adequately train, supervise, and take remedial action against Cpl. Quigg. Plaintiffs sought total damages of $150,000 on their claims.

On August 1, 2002, this Court granted in part and denied in part Defendant's summary judgment motion, thereby winnowing Plaintiff's Count I claims to those against Cpl. Quigg in his individual capacity for 1) unlawful entry, by all Plaintiffs and 2) excessive force, by Cyril Buss, Sr. Plaintiffs subsequently abandoned their Count II claims. At the conclusion of three days of trial before a jury, the Court instructed the jury on the unlawful entry and excessive force claims, as well as appropriate damages. The jury found that: (1) Cpl. Quigg unlawfully entered Plaintiff's residence on both occasions; (2) Cpl. Quigg reasonably believed that Donnelly lived at and was present at the Buss residence on both occasions; (3) Cpl. Quigg did not knock and announce his identity and purpose before entering on either occasion; (4) none of the Plaintiffs suffered actual emotional injury as a result of Cpl. Quigg's unlawful entry; and (5) Cpl. Quigg did not use excessive force in arresting Cyril Buss, Sr.

Despite its finding that Cpl. Quigg had violated Plaintiffs' Fourth Amendment rights through unlawful entry into the Buss home, the jury failed to award nominal damages. However, in *Carey v. Piphus*, the Supreme Court established the clear rule that if a jury finds that a constitutional violation has been proven, but that plaintiff has not shown injury sufficient to warrant compensatory damages, plaintiff is entitled to at least nominal damages. *See* 345 U.S. 247, 266-67 (1978). The source of the error here lay with the Court's instructions, which failed to inform the jury of its obligation to award nominal damages upon the finding of a constitutional

violation.[3] *See Robinson v. Cattaragus County,*147 F.3d 153 (2d Cir. 1998) (holding that failure to instruct the jury as to its obligation to award nominal damages constitutes "plain error"). Prior to trial, Plaintiffs' counsel had proposed a proper instruction on nominal damages and the Court erroneously rejected it.[4] Following the jury verdict, the Court rectified its error and awarded nominal damages to each of the Plaintiffs,[5] while entering judgment for Plaintiffs on the unlawful entry claim.[6]

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[3] The court instructed the jury, "if you find for the plaintiffs, but you find that the plaintiffs have failed to prove...actual damages, you can award an amount even for $1. It's up to you. You decide." (Trial Tr. at 19)

[4] Plaintiffs' proposed instruction read, "If you find for plaintiffs, but you find that the plaintiffs have failed to prove actual damages, you shall return an award of nominal damages not to exceed one dollar." (Pls.' Proposed Instructions at 9)

[5] Plaintiffs' proposed instruction met the "timely request" requirement announced in *Campos-Orrego v. Rivera,* 175 F.3d 89, 88 (1st Cir. 1999)(requiring that plaintiff request nominal damages either before or after trial). *See also Alexander v. Riga,* 208 F.3d 419,429 (3d. Cir. 2000) ("The entitlement to nominal damages is not automatic; Plaintiff must make a timely request.") (citing Campos-Orrego 175 F.3d at 88). Indeed, Plaintiffs have even satisfied even the most restrictive interpretation of *Carey,* which requires a plaintiff to have at least requested a mandatory nominal damage instruction in their proposed jury instructions. *See, e.g., Kerr-Selgas v. American Airlines, Inc.,* 69 F.3d 1205 (1st Cir. 1995). The Ninth Circuit has held that the entitlement to nominal damages is automatic. *See Floyd v. Laws*, 929 F.2d 1390 (9th Cir. 1990).

[6] It is well established in the Third Circuit that a failure to knock and announce in serving an ordinary arrest warrant, absent certain exigent circumstances, works a deprivation of the Fourth Amendment rights of the residents, then present, of the dwelling entered. See *U.S. v. Wilson*, 123 F. Supp. 2d 278, 284 (E.D. Pa 2000):

> The "knock and announce rule" is rooted in the Fourth Amendment's protection against unreasonable search and seizures. *See Wilson v. Arkansas*, 514 U.S. 927, 931, 131 L. Ed. 2d 976, 115 S. Ct. 1914 (1995). The rule requires police first to knock on the door and announce their purpose and identity before attempting a forcible entry of a dwelling. *See Kornegay v. Cottingham,* 120 F.3d 392, 396 (3d Cir. 1997). . . Courts have upheld dispensing with the knock-and-announce requirement in four situations: (1) the individual inside was aware of the officers' identity and thus announcement would have been a useless gesture; (2)

II. DISCUSSION

A. Entitlement to Fees Under Section 1988

Under the Civil Rights Attorney Fees Award Act, 42 U.S.C. §1988(b), a "prevailing party" in a §1983 action may recover a "reasonable attorney's fee as part of the costs." *Farrar v. Hobby*, 506 U.S. 103, 109 (1987). To be considered a prevailing party within the meaning of §1988, the plaintiff must be able to point to a resolution of the dispute that changes the legal relationship of the parties. *Tex. State Teachers Ass'n. v. Garland Indep. Sch. Dist*., 489 U.S. 782, 792 (1989). Defendant argues that the Plaintiffs' "technical victory" is so "insignificant" that Plaintiffs cannot be said to have "successfully prevailed." On this basis, Defendant asserts that Plaintiffs are not entitled to fees as a matter of law.

Farrar teaches that in civil rights cases in which the plaintiff receives only nominal damages, the court should separate the analysis of "prevailing party" status from the determination of whether plaintiffs have earned merely a "de minimis" or "technical" victory. 506 U.S. at 115 (O'Connor, J., concurring.). The latter inquiry goes to the reasonableness of the fee award, not the question of whether plaintiffs have prevailed. *Id*. I will thus first determine whether plaintiffs are

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> announcement might lead to the sought individual's escape; (3) announcement might place the officers in physical peril; and (4) announcement might lead to the destruction of evidence. *Kornegay*, 120 F.3d at 397.

Here, the jury found that Cpl. Quigg failed to knock and announce his identity in attempting to serve an ordinary arrest warrant on Donnelly, whom he believed to be in the Buss residence. Defendants did not suggest the existence of exigent circumstances justifying Cpl. Quigg's failure to knock and announce, and I can discern none from the record. Under these circumstances, the finding that Cpl. Quigg reasonably believed that Donnelly was in the Buss home does nothing to mitigate the constitutional violation.

prevailing parties and then address the question of how their limited victory affects the propriety of attorneys fees in this case.

1. Prevailing Party Status

Defendant's assertion that Plaintiffs are not prevailing parties for §1988 is plainly at odds with the holding of *Farrar*. There, the Supreme Court held that "a plaintiff who wins nominal damages is a prevailing party under §1988." 506 U.S. at 113. Plaintiffs here have secured nominal damages on one of their §1983 claims that Defendant violated their Fourth Amendment rights and have, therefore, prevailed for §1988 purposes.

2. Propriety of Attorney's Fees

Although Plaintiffs are prevailing parties, the appropriateness of attorney's fees under *Farrar* presents a somewhat closer question. The legislative history of §1988[7] shows that Congress, in enacting the statute, sought to narrow the disparity in legal representation and resources between opposing parties in civil rights cases, particularly where, as here, the defendant is a public official "with substantial resources available to [him] through funds in the common treasury, including the taxes paid by the plaintiffs themselves." H.R. Rep. No. 94-1558, 94th Cong., 2d Sess. 7 (1976) ("House Report").[8] In enacting § 1988, Congress determined that "the

[7] The Supreme Court has thoroughly reviewed the legislative history of § 1988. *See, e.g., Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Blum v. Stenson*, 465 U.S. 886 (1984); *Webb v. Bd. of Edu.*, 471 U.S. 234 (1985).

[8] The House Report further noted, "[w]hile damages are theoretically available under the statutes covered by [§ 1988], it should be observed that, in some cases, immunity doctrines and special defenses, available only to public officials, preclude or severely limit the damage remedy. Consequently, awarding counsel fees to prevailing plaintiffs in such litigation is particularly important and necessary if Federal civil and constitutional rights are to be adequately protected." House Report at 8.

public as a whole has an interest in the vindication of the rights conferred by the statutes enumerated in § 1988, over and above the value of a civil rights remedy to a particular plaintiff." *Hensley v. Eckert*, 461 U.S. 424, 444 n.4 (1983) (Brennan, J., concurring in part and dissenting in part). To effectuate this goal, Congress sought to make fees available both to properly compensate plaintiffs' attorneys and to serve a private enforcement function. *See Carey v. Piphus*, 435 U.S. at 257 n.11 ("[t]he potential liability of § 1983 defendants for attorney's fees [under § 1988] provides additional -- and by no means inconsequential -- assurance that agents of the State will not deliberately ignore . . . [constitutional rights]"); *See also Maine v. Thiboutot*, 448 U.S. 1, 11 (1980) ("Congress viewed the fees authorized by § 1988 as 'an integral part of the remedies necessary to obtain' compliance with § 1983," (quoting S. Rep. No. 94-1011, 94th Cong., 2d Sess. 5 (1976)) ("Senate Report")). These dual objectives are embodied in the language of the Senate Report, which envisions compensation of plaintiffs' attorneys "for all time reasonably expended on a matter." Senate Report at 6.

In view of this history, the Supreme Court has reasoned that a prevailing plaintiff should ordinarily be awarded attorney's fees unless special circumstances would make an award unjust. *See Hensley*, 461 U.S. at 429-430. Specifically, the Court has held that nominal damages will support an award of attorney's fees based on the vindication of important constitutional rights. *See City of Riverside v. Rivera*, 477 U.S. 561, 575 (1986) ("Because damages awards do not reflect fully the public benefit advanced by civil rights litigation, Congress did not intend for fees in civil rights cases, unlike most private cases, to depend on obtaining substantial monetary relief.").

In *Farrar*, the Supreme Court narrowed the scope of district courts' discretion to award fees, indicating that there are "some circumstances" in which a plaintiff who "prevails" for §1988

purposes should nevertheless not recover attorney's fees. 506 U.S. at 113. In particular, "when a plaintiff recovers only nominal damages because of his failure to prove an essential element of his claim for monetary damages, the only reasonable fee is *usually* no fee at all." *Farrar*, 506 U.S. at 115 (emphasis added).

The imperfect guidance of the majority opinion in *Farrar* has given the lower courts an opportunity to fashion more specific rules for approaching nominal damages cases. For example, several circuit courts have addressed *Farrar's*impact on the ability of district courts to award fees in mixed motive Title VII cases[9] where no damages or only nominal damages have been awarded, but the plaintiff has prevailed. They have almost uniformly held that the district courts retain their discretion in such cases to determine whether, and how large, an attorney's fee should be awarded. *See Norris v. Sysco Corp*. 191 F.3d 1043, 1051 (9th Cir.,1999); *Akrabawi v. Carnes Co.*, 152 F.3d 688, 695-697 (7th Cir. 1998); *Canup v. Chipman-Union, Inc*., 123 F.3d 1440, 1443-44 (11th Cir.1997); *Sheppard v. Riverview Nursing Center, Inc.*, 88 F.3d 1332, 1339 (4th Cir. 1996). The Tenth Circuit has gone further to say that even in the face of nominal, de minimis, or no relief, a prevailing Title VII plaintiff should "ordinarily" recover fees. *Gudenkauf v. Stauffer Communications, Inc*., 158 F.3d 1074, 1081 (10th Cir.1998). Recently, the Third Circuit held that a plaintiff whose Fair Housing Act rights were violated, but to whom no damages were awarded, was a prevailing party and directed the district court to award costs and fees. *Alexander v. Riga*, 208 F. 3d 419, 430 (3d Cir. 2000).

In light of these cases, the legislative history of §1988, and the language of the *Farrar*

[9] The standards for awarding fees are generally the same as under the fee provisions of the 1964 Civil Rights Act. *See Hensley*, 461 U.S. at 433 n. 7.

opinion itself, I decline Defendant's implicit invitation to read *Farrar* as a *per se* bar to attorneys fees in civil rights cases where plaintiffs have secured only nominal damages or no damages at all.[10] *See Milton v. City of Des Moine*s, 47 F.3d 944, 946 (8th Cir.1995); *Wilcox v. City of Reno*, 42 F.3d 550, 554 (9th Cir.1994). Instead, I understand *Farrar* to require an inquiry into whether plaintiff's victory may be characterized as so "technical" or "de minimis" that it falls within that category of cases in which "the only reasonable fee is...no fee at all." 506 U.S. at 115.

In assessing whether a plaintiff who has secured only nominal damages may reasonably be awarded fees, courts look to the "degree of success obtained" by plaintiff in the litigation. *Farrar*, 506 U.S. at 113 (quoting *Hensley*, 461 U.S. at 434). Justice O'Connor's concurrence[11] points to three relevant indicia of success: the "extent of relief," the "significance of the legal issue on

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[10] The Supreme Court has upheld awards of attorneys fees in civil rights cases where plaintiffs obtained no damage award whatsoever. *See*, e.g., *Maher v. Gagne*, 448 U.S. 122,129 (1980) ("'For purposes of the award of counsel fees, parties may be considered to have prevailed when they vindicate rights through a consent judgment or without formally obtaining relief.'" (quoting Senate Report at 5)). In *Ganey v Edwards* 759 F.2d 337, 339 (4th Cir. 1985), the Fourth Circuit – through a bizarre construction of *Carey* – upheld the district court's refusal to award nominal damages to a successful §1983 plaintiff, but nevertheless deemed plaintiff to be the prevailing party. On remand, the district court awarded attorney's fees and costs. On a subsequent appeal, the Fourth Circuit affirmed the award of attorneys fees and costs under §1988. *Ganey v. Garrison,* 813 F.2d 650, 651 (4th Cir. 1987). Under this reasoning, even if I had declined to correct the errant failure to award nominal damages, awarding attorney's fees in this case would not be unreasonable as a matter of law.

[11] Many of the circuit courts have relied on Justice O'Connor's concurrence in *Farrar* for guidance in determining whether a prevailing party awarded nominal damages has achieved the sort of "technical" or "de minimis" recovery that would render an attorney's fee award inappropriate. *See, e.g., Cabrera v. Jakabovitz*, 24 F.3d 372 (2d Cir.1994); *Johnson v. Lafayette Fire Fighters Ass'n Local 472*, 51 F.3d 726 (7th Cir.1995); *Briggs v. Marshall*, 93 F.3d 355 (7th Cir.1996); *Jones v. Lockhart*, 29 F.3d 422 (8th Cir.1994); *Morales v. City of San Rafael*, 96 F.3d 359 (9th Cir.1996), *amended by* 108 F.3d 981 (9th Cir.1997); *Phelps v. Hamilton*, 120 F.3d 1126 (10th Cir.1997);*Brandau v. Kansas* , 168 F.3d 1179 (10th Cir.1999)

which the plaintiff prevailed," and the "public purpose" accomplished by the litigation. 506 U.S. at 120-21; *see also Cartwright v. Stamper*, 7 F.3d 106, 109 (7th Cir 1993).

a. Extent of Relief

The first factor compares the judgment recovered with the judgment sought. In *Farrar*, the plaintiff sought $17 million in compensatory damages and received only one dollar in nominal damages. 506 U.S. at 107. The Court, noting that the district court had altogether failed to consider this factor in awarding plaintiff attorney's fees, found that it was "hard to envision a more dramatic difference" between the relief sought and that obtained. *See Farrar* 506 U.S. at 120 (O'Connor, J., concurring). In *Romberg v. Nichols*, 48 F.3d 453 (9th Cir. 1994), cited by Defendant, plaintiffs sought $2 million in punitive damages and received only one dollar in nominal damages. *See id.* at 454. The court observed, "as in *Farrar*, plaintiffs requested a substantial sum, but received only one dollar each." *Id* at 455. In *Washington v. Philadelphia County Court of Common Pleas*, 89 F.3d 1031 (3d Cir. 1996), on which Defendant also relies, the Third Circuit concluded that the district court was "within its broad discretion" when it reduced the requested attorney's fees by fifty percent because, in addition to other factors, plaintiff "hardly won a decisive victory." 89 F.3d at 1043. There, the plaintiff had requested $661,776.02 in damages, "a figure which did not include mental anguish, punitive damages, and prejudgment interest, and also did not include the $103,000 [plaintiff] claimed in lost wages." *Id*. The jury "ruled against his primary claim, racial discrimination," and awarded "what amounted to a nominal victory of $25,000" on his retaliation claim. *Id*.

The instant case is distinguishable. Here, Plaintiffs sought an aggregate award of $150,000

in damages.[12] This hardly reflects a desire for monetary relief of the scale presented by plaintiffs in *Farrar*, *Romberg* and *Washington*.

Moreover, it is plainly evident that Plaintiffs here sought vindication of their constitutional rights. The gravamen of Plaintiffs' complaint lay with Cpl. Quigg's entries into their home without authorization or exigent circumstances, and his actions during the dispute prompted by those entries. The parties agree that Cyril Buss, Sr. made repeated demands to be shown a warrant upon Cpl. Quigg's entry into his home. (Stip. Facts ¶ 12,15.) These demands, and the demand for an explanation of the prior day's illegal entry, formed the basis of the dispute between Mr. Buss and Cpl. Quigg from which Plaintiffs' other claims arose. In making an unlawful entry claim, then, Plaintiffs decided to put before a jury the question of whether Mr. Buss had rightly objected to a violation of his and his family's constitutional rights.

Viewed in this light, Plaintiffs partial victory takes on notable significance. Plaintiffs prevailed on their bedrock claim[13] of unlawful entry and I awarded one dollar in nominal damages to each plaintiff. In so doing, they gained more than merely the "'moral satisfaction of knowing that a federal court concluded that their rights had been violated' in some unspecified way."

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[12]The Court notes that parties frequently allege damage in excess of $150,000 render the case ineligible for compulsory arbitration procedures. (*See* Local Rule 53.2)

[13] In *Franz v. Lytle* , 854 F. Supp. 753, 757 (D.Kan. 1994), plaintiffs originally pleaded several section 1983 claims, on behalf of both a minor plaintiff and her parents, based on two alleged illegal searches of the minor by defendant police officer. The court ruled that the parents had not suffered any injury actionable under section 1983, but that the search was unreasonable and illegal. Plaintiffs had requested $50,000 in damages on the minor plaintiff's two section 1983 claims. The jury awarded $250 for one of the searches and found in favor of the defendant for the other. After applying *Farrar*, the court awarded the full amount of the requested attorney's fees, noting that one plaintiff had "prevailed on the central issue in this case." *Franz*, 854 F.Supp. at 757.

Farrar 506 U.S. at 113 (quoting *Hewitt*, 482 U.S. 755, 762 (1987)). Rather, they gained an authoritative determination that they rightly acted to enforce their constitutional right against unreasonable search and seizure in their home. Although it does not readily translate in monetary terms, this is not a trifling accomplishment. It would certainly not "[stretch] the imagination" to consider the result a "victory in the sense of vindicating the rights of the fee claimants." *Commr's Court of Medina County, Tex. v. United States*, 683 F.2d 435, 442-43 (1982).

Plaintiffs' failure to succeed on their excessive force claim does not upset this analysis. Because excessive force presents a more readily cognizable injury than unlawful entry, succeeding on the excessive force claim would have dramatically increased the likelihood of securing Plaintiffs' damages at the level claimed. Yet I do not perceive that Plaintiffs' excessive force claim ranks higher in importance to their case. Rather, it attends the central claim of unlawful entry and, because of Mr. Buss's resistance to arrest, presents a far more difficult claim on which to succeed. Nor can it be said that plaintiffs "aim[ed] high and fell far short ... in the process inflicting heavy costs on [their] opponent and wasting the time of the court." *Hyde v. Small*, 123 F.3d 583, 585 (7th Cir. 1997). Plaintiffs made a reasonable demand based on the facts alleged, and presented a difficult case efficiently through three days of jury trial.

Two cases present similar facts to the instant case and in each the court affirmed the award of fees. In *Brandau v. Kansas*, 168 F.3d 1179 (10th Cir.1999), the Tenth Circuit upheld an award of attorney's fees and expenses of $41,598.13 where the plaintiff prevailed on a Title VII hostile work environment sexual harassment claim,[14] and the jury awarded her one dollar in nominal

[14] The legislative history of § 1988 indicates that the standards for awarding fees are generally the same as under the fee provisions of the 1964 Civil Rights Act. *Hensley*, 461 U.S. at

damages. With regard to the first of Justice O'Connor's factors, the Tenth Circuit noted the district court's determination that the plaintiff sought only 21 months in back pay and $50,000, in contrast to the $17 million in *Farrar*, and also noted the fact that plaintiff's suit was not protracted. *See Id.* at 1182. In *Jones v. Lockhart*, 29 F.3d 422 (8th Cir.1994), the plaintiff brought a § 1983 action against prison officials for excessive force and sought $860,000 in damages. The jury awarded nominal damages of one dollar and punitive damages of one dollar, and the district court awarded $25,000 in attorney's fees. On appeal, the Eighth Circuit upheld the attorney's fees award, observing that while there was a discrepancy between the amount sought and that recovered, "it pales in comparison to the discrepancy presented in *Farrar*." *Id*. at 424.

The instant case falls in line with *Brandau* and *Jones*. The discrepancy between $150,000 and $3 does not approach the level that concerned the court in *Farrar*. Thus, the first and "most important"[15] indicia of success weighs in favor of an award of reasonable fees.

b. Significance of The Legal Issue on Which Plaintiff Prevailed

The second factor examines the significance of the legal issue on which plaintiff prevailed. In *Farrar*, Plaintiffs had alleged deprivation of procedural due process rights by various state and county officials allegedly engaged conspiracy and malicious prosecution aimed at closing a school that plaintiffs owned and operated. 506 U.S. at 104. The lower courts have already established that the legal issue on which Plaintiffs prevailed in *Farrar* falls low on the spectrum of importance. In *Jones*, for example, the Court reasoned that the "vindication of the constitutional right to be free

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433 n. 7.

[15] *See Maul v. Constan*, 23 F.3d 143, 145 (7th Cir. 1983).

from cruel and unusual punishment is a significant legal issue in contrast to the injury to a business interest alleged in *Farrar*." 29 F.3d at 424. Courts have found, in the same vein, that fundamental constitutional claims achieve the "significance" envisioned by Justice O'Connor. In *Lucas v. Guyton*, the court, following *Jones*, found plaintiffs excessive force claim against correctional officers significant and noting, "the constitutional right to be free from cruel and unusual punishment...is one of the premises upon which this great nation was founded and that right continues to distinguish this nation today." 901 F. Supp. 1047, 1055 (D.S.C.1995) (citing *Jones* 29 F.3d at 424). Here, Plaintiffs prevailed on an unlawful entry claim under the Fourth Amendment. The importance accorded the protection of the home from arbitrary entry by law enforcement personnel needs little elaboration. *See Oliver v. United States*, 466 U.S. 170, 178 (1984) ("The Court since the enactment of the Fourth Amendment has stressed 'the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic.'")(quoting *Payton v. New York*, 445 US 573, 601. n.8 (1980).) I thus find it difficult to question the legal significance of Plaintiffs' successful claim that Cpl. Quigg unlawfully entered their home on two separate occasions.

Some courts have also interpreted the second factor in terms of the plaintiff's degree of success on their theory of liability, given the defendants sued and the issues raised. *See, e.g. Muhammad v. Lockhart*, 104 F.3d 1069, 1070 (8th Cir. 1997); *Maul*, 23 F.3d at 145. In *Farrar*, the jury found that one of six defendants – the only one not found to have engaged in a conspiracy – had deprived one of the plaintiffs of a civil right. 506 U.S. at 104. Here, Plaintiffs suffered summary judgment on their state law claims and their Fourteenth Amendment claim. They also abandoned their claim of supervisory liability. Thus at trial, the only questions before the jury

related to unlawful entry and excessive force. As noted, plaintiffs succeeded on their unlawful entry claim. This suffices to tip this factor in their favor. *See Briggs v. Marshall*, 881 F. Supp. 414, 419 (S.D. Ind. 1995) (finding that second O'Connor factor weighed in plaintiffs' favor where plaintiffs failed on all claims except excessive force), *aff'd*, 93 F.3d 355 (7th Cir. 1996)

c. Public Purpose Served

The third factor examines the public purpose served by Plaintiffs' victory. As in *Romberg*, Plaintiffs' lawsuit failed to achieve "tangible results" in service of a public purpose. 48 F.3d at 455. Plaintiffs suit will not likely cause a change in police policy or training, nor will it have potential collateral estoppel effects. Justice O'Connor, however, recognized the intangible value to the public of the "private attorney general" function of civil rights suits made possible by §1988.[16] *See Farrar*, 506 U.S. at 120. In *Farrar*, Justice O'Connor was unable to discern – because the district court did not clearly indicate – how the judgment or a fee award would deter future lawless conduct. *Id*. Here, however, the deterrence value is more apparent. The Supreme Court has specifically recognized the value of §1983 damage actions in deterring illegal entries of dwellings by police. *See Segura v. United States*, 468 U.S. 796, 812 (1984). Cpl. Quigg's conduct undoubtedly affects that of the officers below his rank. Indeed, Cpl. Quigg illegally entered the Buss home on two occasions in the company of junior officers. It can be little

[16] *See also McCann v. Coughlin*, 698 F.2d 112, 128 (2d.Cir. 1983) (upholding grant of attorneys fees where plaintiff received only nominal damages on due process claim and noting, "the policy underlying [§1983] is to encourage litigants to assume the role of a private Attorney General. This policy may be served by granting a fee request even where a plaintiff is unable to prove actual damages resulting from his constitutional deprivation."); *Muraresku v. Amoco Oil Co.* 648 F. Supp. 347, 349 (E.D. Pa. 1983) ("A nominal verdict may serve as an incentive for the defendant to abstain from future unlawful behavior and create a precedent for other action against this or similarly situated defendants.").

doubted that officers in his position routinely confront opportunities to enter dwellings to serve search and arrest warrants. In those situations, the jury verdict in this case teaches a valuable lesson because it carries a plain meaning:[17] you must knock, announce and wait for a response before entering.

Under these circumstances, to characterize Plaintiffs' success as "technical" or "de minimis" such that no attorney's fee could be reasonable would defy the very purpose of the governing statute. Plaintiffs have achieved a victory whose significance cannot be readily cast in monetary terms, yet it is not insignificant. Where law enforcement officers plainly violate constitutional rights, the availability of counsel should not be made to depend on the degree to which plaintiffs endure emotional harm. To so hold is to patently disregard the well-established enforcement function of §1988.

As the Seventh Circuit, in an opinion written in a case involving an award of $500 for false arrest, reasoned:

> The district court based its decision to award no fees on the small size of the verdict and the fact that the case broke no new ground in the law of police abuses. If these are sufficient grounds it means that routine police misconduct that, although unconstitutional, is neither harmful enough to support a large award of compensatory damages nor malicious enough to justify an award of punitive damages is, as a practical matter, beyond the reach of the law. It is impossible, unless there is an expectation of a fee award (and often not then), to interest a competent lawyer in bringing a suit in federal court to recover a small amount of damages unless the plaintiff is a rich person willing to finance the suit out of his own pocket rather than by means of a contingent-fee contract, the normal way in which tort suits are financed in this country. Yet the cumulative effect of petty violations of the Constitution arising out of the interactions between the police (and other public officers) and the citizenry on the values protected by the Constitution may not be petty, and if this is

[17] *See Farrar*, 506 U.S. at 122 (noting that verdict could not deter misconduct because "it teaches no valuable lesson because it carries no discernable meaning.")

> right then the mere fact that a suit does not result in a large award of damages or the breaking of new constitutional ground is not a good ground for refusing to award any attorneys' fees.

Hyde v. Small, 123 F.3d 583, 585 (7th Cir.1997) (Posner, J.).

Farrar instructs that where a plaintiff's victory is merely "technical" or "de minimis," the court need not go through the usual complexities of calculating reasonable attorney's fees. 506 U.S. at 117. Because I find that plaintiffs victory here is more than merely "technical" or "de minimis," I now turn to an analysis of reasonable fees and costs.

B. Determination of Reasonable Fees and Costs

Courts assess the reasonableness of a claimed fee using the "lodestar" formula by multiplying the number of hours reasonably expended by the appropriate hourly rate. *See Hensley v. Eckert*, 461 U.S. 424, 433(1983); *Maldonado v. Houstoun*, 256 F.3d 181, 184 (3d Cir. 2001). The prevailing party has the burden of showing the reasonableness of its request. *See Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1990). The opposing party must challenge the request with sufficient specificity to provide notice to the fee applicant of the portion of the fee that must be defended. *See id*. Once the opposing party's objection is made with the required support, a court has considerable discretion to adjust the fee in light of the objections of the adverse party. *See Bell v. United Princeton Props.*, 884 F.2d 715, 721 (3d. Cir. 1989).

1. Reasonableness of Hourly Rate

The reasonableness of the claimed hourly rate is generally measured against the "prevailing market rates in the relevant community." *Maldonado*, 256 F.3d at 184 (citing *Blum v. Stenson*, 456 U.S. 886, 895 (1984)). The Third Circuit has held that the attorney's fee schedule

composed by Community Legal Services ("CLS") is "a fair reflection of market rates in Philadelphia." *Id.* at 187. Plaintiffs' counsel, Tim Barton, represents that he has over fourteen years of trial experience and that the hourly rate he claims here, $200.00, is his usual and customary rate. Moreover, Defendants concede both that Mr. Barton's claimed hourly rate complies with the CLS schedule and that it is reasonable. For these reasons, I find Mr. Barton's hourly rate to be reasonable.

2. Reasonableness of Hours Expended

The fee petition must be sufficiently specific to allow the court to determine if the hours claimed are unreasonable for the work performed. *See Maldonado*, 89 F.3d at 1037; *Dellarciprete*, 892 F.2d at 1190. Hours billed that are excessive, redundant or unnecessary are not reasonably expended and should be excluded from the calculation. *Hensley*, 461 U.S. at 434. Specifically, an attorney may not recover legal fees for easily delegable non-legal work. *See Skaggs v. Hartford Financial Group*, Civ. A. No. 99-3306, 2001 WL 1665334, at *21, 2001 U.S. Dist. LEXIS 20351, at *63 (E.D. Pa. 2001) (citing *Ursic v. Bethlehem Mines*, 719 F.2d 670,677 (3d Cir. 1995)). Here, Mr. Barton claimed a total of 177.8 hours for legal work performed.

Defendant objects to time claimed for court filings. In particular, the entries objected to include:

1. 1.8 hours – "File complaint in person in USDC.E.D.Pa.; Discuss same and treatment with Maria; Discuss same with Al Maroletti."
2. 1.5 hours – "Hand deliver Motion to Amend Complaint to Courthouse. Travel."
3. 4.5 hours – "Revise response to MSJ. Hand deliver MSJ to federal court."

Defendant tallies these entries to include 5.3 hours of unreasonable time spent on court filings by allocating 2.0 hours of the 4.5 hour entry to delivery time and not allocating any time to

the "discussion" component of the 1.8 hour entry. Defendant correctly observes that in *Skaggs* I found that the logistics of filing a document with the court do not require an attorney's legal knowledge and training. 2001 WL 1665334, at *21, 2001 U.S. Dist. LEXIS 20351, at *63 . I agree with Defendant that the filing-related activities above do not constitute legal work. Treating 1.5 hours as the time required for Mr. Barton to deliver documents to the court, I will reduce each of the above-claimed entries by 1.5 hours, yielding a total reduction of 4.5 hours.

Defendant also contends that I should not include hours expended on activities relating to claims other than the entry claim. He points out that the vast majority of time spent on this litigation pertained to the use of force claim, while only a small portion pertained to the entry claim. I will treat this argument as a request to adjust the lodestar calculation downward based on plaintiffs' lack of success and take up this issue after calculating the lodestar.

My own review of Mr. Barton's work activity report reveals that the claimed hours are well documented and, outside of those expended on court filings, do not reflect an unreasonable expenditure of time. Mr. Barton devoted 6.6 hours to pre-filing case evaluation and meetings; 23.1 hours to preparing and filing the pleadings; 67.4 hours to discovery (Mr. Barton's depositions of the defendant and three other officers required a total of only 10.5 hours.); 7.4 hours to preparing and responding to the motion for summary judgment; 40.0 hours to trial preparation; 23.0 hours to the trial itself; 2.3 hours to the counsel fee petition. These hours appear to suggest that Mr. Barton worked efficiently. His hours thus require only a reduction based on the claims for filing documents.

3. Adjusting the Lodestar

As noted, Defendant argues that I should "discount" plaintiffs' fee award based on their

failure to prevail on the excessive force claim. The Supreme Court in *Hensley* discussed factors that might lead a court to adjust the lodestar figure upward or downward, including the "important factor of the results obtained." 461 U.S. 424. There, the Court rejected the "mathematical approach" of comparing the total number of issues in the case with those actually prevailed upon. *Id*. at 435. Here, Defendants adopt what must be termed a mathematical approach by calculating the percentage of page numbers in deposition transcripts, pleadings and motions pertaining to the unlawful entry claim. Based on a calculation that six percent of the nine non-expert depositions pertained to the entry claim and eighteen percent of the summary judgment pleadings pertained to the entry claim, Defendants conclude that twelve percent represents a reasonable estimate of "the portion of the trial allocated to the unlawful entry claim." Applying these percentage figures to the hours claimed with great precision, Defendants request a reduction from 177.8 hours to 18.3 hours.

In order for the Court to make these reductions, the time entries must be "distinct in all respects from claims on which the party did succeed." *Rode*, 892 F.2d at 1183. I find it difficult to distinguish in this way between time devoted to successful and unsuccessful claims based, for example, on the number of pages in the transcript of a deposition devoted to both the unlawful entry and excessive force claims.

The Supreme Court has held that – rather than pursue the kind of mathematical sophistry in which Defendants engage – the judge should consider whether or not the plaintiff's unsuccessful claims were related to the claims on which he succeeded, and whether plaintiff achieved a level of success that makes it appropriate to award attorneys fees for hours reasonably expended on unsuccessful claims. *Hensley*, 461 U.S. at 435. Where successful and unsuccessful

claims share a common core of facts and related legal theories, or where counsel's time is dedicated to the litigation as a whole, the lodestar value should not be modified downwards. *Id.* ; *Adams v. Lightolier*, 50 F.3d 1204, 1222 (3d. Cir. 1995); *W. Va. Univ. Hosps. v. Casey*, 898 F.2d 357, 361 (3d. Cir 1991); *Northeast Women's Ctr. v. McMonagle*, 889 F.2d 466, 475 (3d Cir. 1989). Here, as noted, plaintiffs' claim for unlawful entry shares a common nucleus of operative fact with plaintiffs' excessive force claim as well as the state law and Fourteenth Amendment claims that did not survive summary judgment. Plaintiffs' claims all arose out of the events surrounding Cpl. Quigg's entry into the Buss home in August, 1999.

The analysis does not finish there, however. The Court also indicates that

> A plaintiff who has won "substantial relief" should not have his attorney's fee reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained.

Hensley, 461 U.S. at 440. Fees need not be reduced to maintain a proportionate ratio with the damages awarded – but only to reflect a limited degree of success obtained. *See Washington*, 89 F.3d at 1042; *Tumolo v. Triangle Pac. Corp*., Civ. A. No. 98-4213, 1999 WL 672913, at *3, 1999 U.S. Dist. LEXIS 13431, at *8 (E.D.Pa .1999). Here, Plaintiffs have achieved limited success by securing nominal damages on their unlawful entry claim. I must thus determine whether this limited success warrants a general reduction in the overall fee award.

Courts in this circuit have taken a wide array of approaches to the reduction of attorneys fees for lack of success. *See, e.g., Washington,* 89 F.3d at 1043, finding that the district court's reduction of plaintiff's attorney's fees by fifty percent was appropriate where plaintiff had requested more than $750,000 in damages and the jury "ruled against his primary claim, racial

discrimination," and awarded "what amounted to a nominal victory of $25,000"on his retaliation claim.); *Hall v. American Honda Motor Co.*, Civ. A. No. 96-8103, 1997 WL 732458 at *4, 1997 U.S. Dist. LEXIS 18544, at *11 (E.D. Pa. Nov. 24, 1997) (reducing award by ten percent where plaintiff sought damages in this case in excess of $50,000.00 and received final judgment of $4,000.00); *Hilferty v. Chevrolet Motor Div. of the General Motors Corp*., Civ. A. No. 95-5324, 1996 WL 287276, at *6-7, 1996 U.S. Dist. LEXIS 7388, at 24-25 (E.D. Pa. May 30, 1996) (reducing fee award by approximately two-thirds where plaintiff recovered only eight percent of damages sought), *aff'd*, 116 F.3d 468 (3d Cir. 1997). Here, Mr. Barton seeks a modest sum in relation to the issues at stake in this litigation. In view of that fact, and the foregoing analysis, I will make no reduction in Plaintiffs' requested attorney's fee award because they failed to succeed on all of their claims.

4. Expenses

Expert fees are not compensable for successful §1983 claims under the fee-shifting provisions of §1988. See *Casey*, 499 U.S. at 102; *Abrams*, 50 F.3d at 1225. Accordingly, I will not grant Plaintiff's expert witness fees he seeks in the amounts of $4,000 for Dr. Boylan and $500 for Dr. Burmeister.

III. CONCLUSION

For the forgoing reasons, I will grant Plaintiffs' petition for attorney's fees. I will, however, reduce the claimed hours by 4.5 to reflect time spent non-legal matters. I will also reduce the expenses awarded by $4,500 to reflect those expenses accounted for by expert fees.

Thus, I will award Plaintiffs $34,660 in attorney's fees and $3,479 in costs. An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARIA T. BUSS, individually and as administratrix of CYRIL F. BUSS, SR., deceased, and DANA BUSS,	:	**CIVIL ACTION**
Plaintiffs,	:	
	:	
v.	:	
	:	
CORPORAL JOHN QUIGG,	:	
Defendant	:	**No. 01-CV-3908**

ORDER

AND NOW, this day of **October, 2002**, upon consideration of Plaintiffs' Motion for Attorney Fees and Costs (Document No. 33) and Defendant's response thereto (Document No. 34), and for the set forth in the forgoing memorandum, it is hereby **ORDERED** that:

1. Plaintiffs' motion is **GRANTED IN PART AND DENIED IN PART** as follows: Plaintiff is awarded $34,660 in attorney's fees and $3,479 in costs.

BY THE COURT:

_____

Berle M. Schiller, J.